

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

GREGORY COLBURN et al.,

Defendants

Criminal Action
No. 19-10080-NMG

ORAL ARGUMENT REQUESTED

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT JOHN
WILSON'S MOTION IN LIMINE TO EXCLUDE EVIDENCE
CONCERNING INTERNAL REVENUE AGENT'S BELIEFS OR
OPINIONS AS TO WILSON'S STATE OF MIND
OR QUESTIONS OF TAX LAW**

The government has identified IRS Revenue Agent Mark Degnan as a summary witness who will testify at trial about entries on Wilson's federal tax return. Wilson seeks to preclude Degnan from offering any evidence that: (a) relates to Wilson's mental state or intent connected to any crime, which is inadmissible under Federal Rule of Evidence 704(b), or (b) purports to explain or opine on tax law. Such testimony would be inadmissible, would mislead or confuse the jury, and has little probative value clearly outweighed by its prejudice. Fed. R. Evid. 403.

The Court should preclude Agent Degnan or any other federal agents from testifying about or implying anything about Wilson's state of mind concerning his tax returns. Witnesses "must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime Those matters are for the trier of fact alone." Fed. R. Evid. 704(b); *see also United States v. Mikutowicz*, 365 F.3d 65, 72 (1st Cir. 2004) (noting that an "[IRS] agent may not testify about the defendant's state of mind when the challenged deductions were claimed"); *United States v. Watson*, 260 F.3d 301, 308 (3d Cir. 2001) (reversing conviction because district court allowed testimony related to mens rea); *United States ex rel. Dyer v. Raytheon Co.*, No. 08-10341-DPW, 2013 U.S. Dist. LEXIS 135691, 2013

WL 5348571, *13 (D. Mass. Sept. 23, 2013) (excluding expert testimony that defendant “knowingly misrepresented results” because no expert is qualified to testify as to another's state of mind).

The Court also should preclude Agent Degan or any other federal agents from testifying, directly or indirectly, about any matter of tax law. Only the Court may instruct the jury as to applicable principles of law. *See United States v. Stierhoff*, 549 F.3d 19, 28 (1st Cir. 2008) (an IRS agent “may not give legal opinions that purport to determine a defendant's guilt, nor may such a witness instruct the jury on controlling legal principles”). Accordingly, expert testimony opining on or explaining legal issues is inadmissible. *Mikutowicz*, 365 F.3d at 73 (finding that expert testimony offered to establish the meaning of a law is presumptively improper); *Nieves-Villanueva v. Soto-Rivera*, 133 F.3d 92, 99 (1st Cir. 1997) (holding that it was an “egregious” error to admit expert testimony explaining holdings of various judicial opinions); *Bacchi v. Mass. Mut. Life Ins. Co.*, No. 12-cv-11280-DJC, 2016 U.S. Dist. LEXIS 37772, at *7 (D. Mass. Mar. 23, 2016) (granting motion to strike expert report containing legal analysis and conclusions); *Karp v. CIGNA Healthcare, Inc.*, 882 F. Supp. 2d 199, 205 n.4 (D. Mass. 2012) (granting motion to strike expert declaration to the extent that it consisted of legal arguments and legal conclusions).

For the reasons stated above, Defendant John Wilson respectfully requests that the Court grant his Motion in Limine to Exclude Evidence Concerning Internal Revenue Agent’s Beliefs or Opinions as to Wilson’s State of Mind or Questions of Tax Law.

Respectfully submitted,

John Wilson,

By his Counsel,

/s/ Michael Kendall

Michael Kendall (BBO #544866)

Lauren Papenhausen (BBO# 655527)

WHITE & CASE LLP

75 State Street

Boston, MA 02109-1814

Telephone: (617) 979-9310

michael.kendall@whitecase.com

lauren.papenhouse@whitecase.com

Andrew Tomback (pro hac vice)

MCLAUGHLIN & STERN, LLP

260 Madison Avenue

New York, NY 10016

Telephone: (212) 448-1100

ATomback@mclaughlinstern.com

Counsel for John Wilson

/s/ Brian T. Kelly

Brian T. Kelly (BBO # 549566)

Joshua C. Sharp (BBO # 681439)

Lauren M. Maynard (BBO # 698742)

NIXON PEABODY LLP

53 State Street

Boston, MA 02109

(617) 345-1000

bkelly@nixonpeabody.com

jsharp@nixonpeabody.com

lmaynard@nixonpeabody.com

Robert Sheketoff (BBO # 457340)

One McKinley Square

Boston, MA 02109

(617)-367-3449

Counsel for Gamal Abdelaziz

Date: July 30, 2021

CERTIFICATE OF COMPLIANCE WITH LOCAL RULES 7.1 AND 112.1

I hereby certify that, before filing this motion, defense counsel attempted in good faith to confer with the government to resolve or narrow the issues.

/s/ Michael Kendall
Michael Kendall

CERTIFICATE OF SERVICE

I hereby certify that the above document is being filed on the date appearing in the header through the ECF system, which will send true copies to the attorneys of record.

/s/ Michael Kendall
Michael Kendall